

REMARKS**Regarding recent interview**

Applicant's representative gratefully acknowledges the courtesy extended by the Examiner during a telephonic interview that was conducted on December 18, 2009. The Examiner and Applicant's representative did discuss aspects of the 112 rejection and various remedies. The Gilbert and Christen references were also discussed as well as proposed claim amendments believed to comport with Examiner's understanding of the invention as an "end user-type kit".

Rejection of Claim 17 under 35 USC 112 – general response

In the recent Action, claim 17 was rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement and under 35 USC 112, second paragraph as failing to particularly point out and claim the subject matter which applicant regards as the invention. Applicant previously amended the Specification to incorporate by reference Applicant's own earlier teachings in the form of U.S. Patent 6,591,828 (hereinafter referred to as "the '828 patent.")

Aside from the remarks on page 2 of the Action, the rationale underlying the 112 rejection is expressed on page 7, lines 9-11 as follows:

"Nothing in the drawings support this "user selectable" claim feature. Each of these specification features support claimed different embodiments or configurations, but none are selectable by a user, as now claimed."

Here, the Office expresses a mistaken belief that Applicant's FIGs 3, 4, 5 and the accompanying description refer to different embodiments under a common inventive concept rather than different forms that a user assembles from a single kit of parts. The Office cites nothing in the specification or the prosecution history that confirms this interpretation. Much to the contrary, Applicant clearly and unequivocally sets forth that

these figures are different constructions that are user-assembled from a single unit, not separately manufactured embodiments.

As evidenced by the excerpts below, Applicant:

- expressly sets forth the objective of creating a reconfigurable kit
- explicitly describes constructing a side from a variable selection from a set of available panels, and
- explains compacting and stowing the common kit of parts between uses.

Objectives to create a single unit with multiple configurations

From present application, see paragraphs 5-6 as follows:

“... The devices of the prior art do not adequately accommodate the need to selectively provide and other suitable for baking, a stovetop suitable for heat items held in other containers, and an open grill surface suitable for heat items directly over a flame heat source of. The present invention provides for a single compact unit that, in various configurations, maybe used in all of these capacities.”

See also from the ‘828 patent:

(col. 2: lines 26-33) “The goal when designing this invention was to provide the user with a unit that offers different levels of cooking as well as a variety of cooking options to include baking, frying and grilling in the outdoors or in home emergencies, and uses materials from within itself for assembly, cooking, and storage to create a truly collapsible, compact unit and carrying case that fits into a backpack and is easily transported.”

(col. 1: lines 29-32) “In the past, camping cooking options, for the most part, have been limited to an oven, or a grill or stove top cooking, or a combination of

the two aforementioned options, but not all three.”

(col. 2: lines 3-9) “This tri-cooking unit is easy to assemble and converts into an oven, stove top or grill using a variety of fuel sources and by placing the grill at the desired cooking height and across the interior width of the frame, and which said grill sits on the top edge of the selected front and rear panels, providing the cooking surface, and regulating the amount of heat that comes in contact with the food.”

Applicant teaches single kit of selectable panels for all of the configurations

In the present application, see:

(Paragraph 8) “In accordance with the preferred exemplary embodiment, the present invention provides for at least one side of the frame structure to comprise one or more side panels that may be configured in various ways to alter the position in which the grill sits within frame and to alter which areas of the side or left enclosed the left open.”

(Paragraph 31) As will be described below, a variety of side panels 104 may be supplied having different dimensions, such as a dimension and the vertical direction when installed as part of the frame. By selection of side panels having a given dimension, or a combination of side panels stacked upon one another, grill 108 may be supported a variety positions within frame 100. Furthermore, the sections of the sides of the frame may selectively being closed or left open depending on the variable arrangement of side panels installed. A principal advantage of the present teaching is that various arrangements of the grill within the framework possible, as will now be described. Some of the many possible configurations are now described in conjunction with FIGS 3-5.”

Applicant's teachings from the '828 patent are equally clear that all of the constructions shown are simply different forms assembled from a single kit of parts. The Office is directed to the following portions of this disclosure that was written the form of an instruction manual:

Opening the kit in preparation for use (col 3:23-26)

Assembling some parts of the kit to form an oven (col 3:27 et seq.)

Assembling some parts of the kit to form a grill (col 4:5 et seq.)

Assembling some parts of the kit to stove top (col 4:40 et seq.)

Disassembling an in-use structure and stowing the parts (col 4:65 et seq.)

Thus, Applicant's teaching as to a single unit taking different forms is explicit, consistent and unequivocal.

Parts for all of the configurations shown are stowed in a single compact kit

In the present application, see FIG 14A, 14B wherein all of the components, including panels 302, 304, 307, compactly stow into a single kit after each use. By accounting for the parts, it is very simple to demonstrate that this single set of parts is all that is needed to assemble and disassemble each of the constructions shown in FIG 3, 4, 5 and to convert the single set among these forms. Applicant's disclosure in the '828 patent provides explicit instructions to a user on how to build all of the assemblies shown from a single, common kit. (col 3:27 ; col 4:5, col 4:40)

In the present Application, see:

(para. 49) "...When disassembled, collapsed or folded, panels 102, 302, 304, 307 that make up the frame assembly may be held within this flattened enclosure, resulting in a conveniently packaged compact unit...."

(para. 50) " In the pictorial views of FIG 14 A and B, it is evident that the container formed by covers 310, 320 may accommodate stack of panels 102, 302-

307 and preferably the grill 108 and any other compact cooking implements as part of the unit.”

Both of these paragraphs indicate that all of the panels (302, 304, 307) utilized in FIGS 3, 4, 5 are members of a single compact kit.

Likewise, in the ‘828 patent, see:

(col. 4: line 65 through col. 5: line 17) “To disassemble and store unit, separate all panels. Locating the handles (11) that are found on the exterior of end panels (3) and cover (5), press handles flat against the exterior side of the panels (FIG. 11). This causes handle ends to protrude on the interior side of panels. To utilize all storage space, place one end panel (3) flat with protruding handle end up into the base (1) first, then proceed to place the two, two inch (2) panels and the two, four inch (4) panels between the protruding handle ends (FIG. 12). Continue adding remaining front, rear and end panels, grill (8) and metal containers (FIG. 6) with handles (6C) resting in a wing storage position, into the unit's base (1). Take the unit's cover (5) and connect the cover's flanged edge to the base's (1) flanged edge. Starting at the base's end that is lowest in height (FIG. 6, 1B) slide cover (5), open end first, through the flanged runner provided on the base to the opposite end. This allows the base's higher end (FIG. 6, 1A) and the cover's open end (FIG. 7) to flush, enclosing all pieces of unit. This creates a compact case (FIG. 14) for carrying, storing or placing into a backpack for easy transporting.”

Conclusion with respect to rejection under 35 USC 112 in general

To the extent that the 112 rejection is rooted in the belief that Applicant's teachings involve different alternative as-manufactured embodiments, Applicant's foregoing evidence to the contrary far overshadows the Office's bald assertion that Applicant's disclosure somehow depicts different, separate fixed embodiments.

In short, the Office's position is unsubstantiated and the Office has failed to show, by any burden of proof, that these are separately manufactured embodiments all comporting with a common inventive concept, rather than, as Applicant has made abundantly clear throughout the record, various optional arrangements assembled by a user from the single set of parts shown, for example, in FIG .14A and 14B. As a stated objective of Applicant's teachings, the user can choose the manner of assembly from a single set of parts, changing among these different constructions as many times as desired over the life of the unit.

Rejection(s) based upon 35 U.S.C. 112, 1st para.

On page 2 of the recent Action, the remarks state that:

"The recitation of a side designation having user selectable variable construction is not enabled by the specification to those skills in the art. That recitation has no basis in the specification as to how a user would select a variable construction."

In response, Applicant draws attention to, for example, the following passages from the '828 patent which has been incorporated by reference:

Assembling some parts of the kit to form an oven (col 3:27 et seq.)

Assembling some parts of the kit to form a grill (col 4:5 et seq.)

Assembling some parts of the kit to stove top (col 4:40 et seq.)

Thus, contrary to the remarks in the Action, Applicant explicitly instructs how a user selects a desired construction of the sides of the unit, that choice of construction being variable among using the unit as an oven or a grill or a stove top unit.

Further on Page 2 of the Action, the remarks state that:

"Specification paragraph 25 discusses variable configuration side panels, but not a user selectable feature. Paragraphs 31 and 37 specify a side may be selectively closed, left open, or variable but nothing enabling one skill in the art a user selection."

In view of the many arguments and passages already presented above in the present response, the Office seems left to only call into question *who* acts upon the unit to achieve the desired configurations. Those of ordinary skill will readily recognize that it is none other than the end user who assembles the unit as they desire according to the instructions provided. This is another point on which Applicant's teachings have been entirely consistent and unwavering.

Conclusion regarding rejection under 35 USC 112, 1st paragraph

Based on the above arguments and showings, Applicant submits that the rejection of claim 17 as allegedly being insufficiently supported by written description is in error. Applicant respectfully requests reconsideration and withdrawal of the rejection.

Rejection(s) based upon 35 U.S.C. 112, 2nd para.

On page 2 of the recent Action, claim 17 was rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The remarks comment that:

“The claimed “user selectable variable configuration” is indefinite because it is not clear how a user would select a variable construction.”

How a user would select a variable construction is taught at least in Applicant's '828 patent at col 3: line 27 et seq. ; col 4, line 5 et seq. ; col 4:; line 40 et seq. These are explicit instructions to a user to accomplish each of the configurations using a single kit.

Furthermore, the ‘user selectable variable configuration’ as recited in Applicant's claim 17 is supported in the specification, is manifest in structural features of the invention shown and described, and these structural features are already expressed in claim limitations that effectively differentiate from any of the known prior art references.

The limitation as to a “user selectable variable configuration” a) emphasizes a manner of providing a kit so that an end user may assembly the same parts in different ways upon each instance of assembling the unit and b) differentiates from a scenario wherein a manufacturer establishes once, at the time of manufacture, a particular fixed construction from among those depicted.

As discussed previously, user selectable variable construction addresses the point that the side is reconfigurable by an end user upon each instance of assembly in preparation for use "as desired" (see Present Application para. 37.) The present invention as described and claimed has structural attributes lending to this ‘user selectable variable construction’, especially the plurality of interchangeable panels available for constructing the variably constructed side and the implementation of a joint system (such as in FIG 2) that allows freedom in the positioning of panels. These attributes allow for choice, fully at the discretion of an end user assembling the unit, in the quantity, size and attachment position of panels used while constructing a given side. As evidenced by the cited passages below, Applicant fully describes these attributes and they are recited in claims limitations that distinguish from any prior art references.

Joint allowing for variable positioning

In support of a panel edge joint that allows for variable attachment position and interchangeability of panels, see FIG 2 of the present Application along with paragraphs 20-21 and 28-29 describing the construction of the joint in an exemplary embodiment. See also, in Applicant’s previous patent (U.S. 6,591,828 which has been incorporated by reference), at FIG 8 and at col. 3:41-48, describing the reversible order of the 2” and 7” panels using the very same joint edges. The present Application similarly depicts the variable positioning exhibited by this joint. Note the interchanging of panels along the front side of the unit shown in FIGS 3, 4, 5 and described in para. 32-36. The same bottom-most position of attachment is shown to be occupied by a 7” panel in FIG 4 and by a 4” panel in FIG 5. The present invention allows a single ‘kit’ including

interchangeable panels to be assembled in any one of these configurations (para. 31) as the end user desires for a given instant need.

Plurality of available panels as a kit

As to the providing of a 'kit' comprising many panels from which an end user selects to construct a side, see the present application at para. 31 :

“...a variety of side panels 104 or may be supplied having different dimensions, such as a dimension in the vertical direction when installed as part of the frame. By selecting of side panels having a given dimension, or a combination of side panels stacked upon one another, grill 108 may be supported at a variety of positions within frame 100. Furthermore, sections of the sides of the frame may be selectively be enclosed in left open depending on the variable arrangement of side panels installed.”

See also the present Application, para. 33, enumerating specific panel sizes in accordance an exemplary embodiment of a 'kit' from which any of the configurations shown in FIG 3, 4, 5 can be constructed by an end user. The present Application then goes on to show three different constructions in these figures that a user may switch between simply by choosing and arranging panels selected from among this group. These characteristic features as to a variety of panels coupled with freely positionable joints are lacking in any of the prior art references.

'User selectable variable construction' is supported in many senses

Panels of various sizes

As to written description supporting 'user selectable variable construction' in the sense of selecting from among panels of various sizes, (the subject of dependent claim 25) in the present application, refer to para. 31 and 33. See also the '828 patent to compare employment of panels of different sizes in different configurations in FIGS 1, 2

Applicant's independent claim 17 recites:

"...wherein the first side having user-selectable variable construction is constructed of at least one panel selected by a user from among a plurality of panels available for constructing the first side..."

Applicant respectfully contends that this limitation carries patentable significance because none of the prior art references involve a user selecting from among a plurality of panels available for constructing a given side.

Variable quantity of panels employed

As to written description supporting 'user selectable variable construction' in the sense of selecting from among panels of employing a variable quantity of panels (the subject of Applicant's claim 24) see in the '828 patent, FIGS 1 and 2 that show different numbers of panels being used (comparable to FIGS 3 and 4 in the present application.)

Also in the '828 patent, see col 3:27-48 and in particular note lines 41-44 as follows:

"for additional cooking height, and to lower the amount of heat that reaches the food, add the two, two inch (2) panels on top of the two standing seven inch (7) panels, sliding panels downward into the flanged edges of the end panels..."

This instruction describes the user's option to use one 7" panel or to use two panels (2"+7") stacked in the course of constructing a given side.

Similarly, in the present Application, compare FIGS 3 and 4 and the associated descriptions in para [0032] to [0035], noting the different quantity of panels used along the same front side. The present invention provides for a plurality of panels and a variable position joint design such that different quantities of panels may be selectively included or excluded by the end user each time they assemble the inventive unit in preparation for use.

A finished product, in accordance with Applicant's teachings is indeed an 'end user-type kit', as the Examiner so aptly described in the most recent Interview Summary. This kit comprises a plurality of panels that may be employed, one at a time or in combination at the choice of the end user, to construct a side of a heating enclosure. None of the prior art references provide for a single side of an enclosure to be variably constructed in this manner using interchangeable panels.

Variable assembly sequence of panels

As to written description supporting 'user selectable variable construction' in the sense of variable sequence of panels (specifically addressed in claim 26), see the present Application and compare FIGS 4 and 5. In particular, note that the back sides in both instances employ the 4" and 7" panels (304 and 307) but that these two panels are reversed and that the grill 108 is supported at different heights as set by the user in selecting which panel to place in the bottom position. This is also amply described in the previous '828 patent. Compare FIGS 2 and 3 therein and read col. 4: lines 40-43 wherein the user is instructed to change the sequence of panel insertion to construct for stove top versus the grill or oven configurations taught earlier.

Here again, the present invention provides for a variety of available panels and a variable positioning joint scheme to achieve the claimed attribute of 'user selectable variable construction'. The recited limitation does express an importance novelty of the invention and is amply supported by Applicant's disclosure.

Conclusion as to rejection 35 USC 112, 2nd paragraph

From the above arguments and cited passages, it is evident that Applicant's independent claim 17, as well as the dependent claims, do in fact "particularly point out and distinctly claim" what Applicant regards as the invention. Relevant differentiating limitations have been identified along with written support for those limitations within

Applicant's disclosure. Applicant respectfully request reconsideration and withdrawal of the rejection of claim 17 as allegedly failing to meet the requirements of 35 USC 112, 2nd paragraph.

Rejections under 35 USC 103

In the recent Action, on pages 3-6, claims 17-27 were rejected under 35 USC 103(a) as being unpatentable over Gilbert (US 5,713,344) in view of Christen (US 3,856,374).

Most of the remarks with respect to Gilbert are reproduced *verbatim* from previous Actions, with all of the obvious shortcomings that Applicant has identified before. These faults include: pointing to different sides of a given prior art structure to encompass what Applicant has claimed must be present on a single side, pointing to an alternative embodiment in Gilbert that has no sides whatsoever, much less a variably constructed side according with Applicant's claims, and relying upon permanently welded panels as being reconfigurable by an end user. The Examiner has yet to effectively rebut any of these crucial points and merely reiterates the language of the previous rejection based on Gilbert.

Beyond the previous remarks, to which Applicant has already responded in a previous response, the Examiner remarks, at the bottom of page 5, that:

"Gilbert discloses the claimed invention, except for the claimed first side feature and panels available for constructing the first side, along with a plurality of panels."

Applicant compares this acknowledged lacking to the portion of pending independent claim 17 that reads as follows:

"...wherein the first side having user-selectable variable construction is constructed of at least one panel selected by a user from among a plurality of panels available for constructing the first side"

The Examiner's remark acknowledges that Gilbert lacks what Applicant regards as a crux of the invention. The Examiner then looks to Christen to remedy this lacking, offering very little indication as to how that reference is interpreted to fulfill Applicant's recited limitation as to a plurality of available panels for constructing a single given 'first side'. Applicant has carefully and thoughtfully reviewed the Christen reference and finds that, for each of the sides of the enclosure according to Christen, there is but one way to construct the given side, using only one particular panel provided and always in a fixed configuration. There is never a plurality of panels lending to any variability in construction of a given side.

Conclusion as to rejections under 35 USC 103

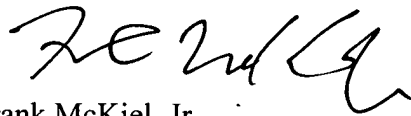
It is apparent that even the combination of Gilbert and Christen do not address all limitations of Applicant's independent claim 17. Consequently, Applicant maintains that claims 17-27 are patentable over the combined references by virtue of the foregoing arguments. Applicant respectfully requests the rejections of claims 17-27 on these grounds be reconsidered and withdrawn.

CONCLUSION

Applicant respectfully requests that the Examiner reconsider the outstanding rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the recent Office Action, as such, the present application should be considered for allowance. If the Examiner believes for any reason that personal communication will expedite prosecution of this Application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of these Remarks is respectfully requested.

Respectfully submitted,



Frank McKiel, Jr.

Reg. No. 43,792
719-482-8464

Date: JAN 25, 2010

Correspondence address:
5880 Derby Rock Loop
Manitou Springs, CO 80829
(719) 685-4700